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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**OUTERBRIDGE ACCESS  
ASSOCIATION, SUING ON BEHALF  
OF DIANE CROSS; and DIANE  
CROSS, An Individual,**

**Plaintiffs,**

**v.**

**MARIE CALLENDER'S PIE SHOPS,  
INC. d.b.a. MARIE CALLENDER'S  
#254; PACIFIC BAGELS, LLC  
d.b.a. BRUEGGARS BAGELS;  
COURTYARD HOLDINGS, LP; AND  
DOES 1 THROUGH 10, Inclusive,**

**Defendants.**

**Case No.: 07cv2129 BTM (AJB)**

**FIRST AMENDED COMPLAINT**

**CLASS ACTION**

**DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;  
CIVIL CODE 51, 52, 54, 54.1,  
54.3]**

**DEMAND FOR JURY TRIAL**

**[F.R.Civ.P. rule 38(b)]**

**INTRODUCTION**

1. Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS AND ITS MEMBERS; and DIANE CROSS, An Individual, herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial

1 District of the United States District Court of the Southern  
2 District of California, that Defendants have in the past, and  
3 presently are, engaging in discriminatory practices against  
4 individuals with disabilities, specifically including minorities  
5 with disabilities. Plaintiffs allege this civil action and others  
6 substantial similar thereto are necessary to compel access  
7 compliance because empirical research on the effectiveness of  
8 Title III of the Americans with Disabilities Act indicates this  
9 Title has failed to achieve full and equal access simply by the  
10 executive branch of the Federal Government funding and promoting  
11 voluntary compliance efforts. Further, empirical research shows  
12 when individuals with disabilities give actual notice of potential  
13 access problems to places of public accommodation without a  
14 federal civil rights action, the public accommodations do not  
15 remove the access barriers. Therefore, Plaintiffs make the  
16 following allegations in this federal civil rights action:

#### 17 **JURISDICTION AND VENUE**

18 2. The federal jurisdiction of this action is based on the  
19 Americans with Disabilities Act, 42 United States Code 12101-  
20 12102, 12181-12183 and 12201, et seq. Venue in the Judicial  
21 District of the United States District Court of the Southern  
22 District of California is in accordance with 28 U.S.C. § 1391(b)  
23 because a substantial part of Plaintiffs' claims arose within the  
24 Judicial District of the United States District Court of the  
25 Southern District of California.

#### 26 **SUPPLEMENTAL JURISDICTION**

27 3. The Judicial District of the United States District Court of  
28

1 the Southern District of California has supplemental jurisdiction  
2 over the state claims as alleged in this Complaint pursuant to 28  
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper  
4 in this action is because all the causes of action or claims  
5 derived from federal law and those arising under state law, as  
6 herein alleged, arose from common nucleus of operative facts. The  
7 common nucleus of operative facts, include, but are not limited  
8 to, the incidents where Plaintiffs were denied full and equal  
9 access to Defendants' facilities, goods, and/or services in  
10 violation of both federal and state laws when they attempted to  
11 enter, use, and/or exit Defendants' facilities as described below  
12 within this Complaint. Further, due to this denial of full and  
13 equal access, OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF  
14 DIANE CROSS and DIANE CROSS, An Individual, and other persons with  
15 disabilities were injured. Based upon the said allegations, the  
16 state actions, as stated herein, are so related to the federal  
17 actions that they form part of the same case or controversy and  
18 one would ordinarily expect the actions to be tried in one  
19 judicial proceeding.

20 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

21 4. Defendants are, and, at all times mentioned herein, were, a  
22 business or corporation or franchise organized and existing and/or  
23 doing business under the laws of the State of California.  
24 Plaintiff is informed and believes and thereon alleges that  
25 Defendant MARIE CALLENDER'S PIE SHOPS, INC. is the owner,  
26 operator, franchiser, licensor, and/or is doing business as MARIE  
27 CALLENDER'S #254. Defendant MARIE CALLENDER'S PIE SHOPS, INC.  
28

1 d.b.a. MARIE CALLENDER'S #254 is located at 11122 Rancho Carmel  
2 Drive, San Diego, California 92128, Assessor Parcel Number: 313-  
3 730-38. Plaintiff is informed and believes and thereon alleges  
4 that Defendant PACIFIC BAGELS, LLC is the owner, operator,  
5 franchiser, licensor, and/or is doing business as BRUEGGARS  
6 BAGELS. Defendant PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS is  
7 located at 11134 Rancho Carmel Drive, San Diego, California 92128,  
8 Assessor Parcel Number: 313-042-04. Plaintiff is informed and  
9 believes and thereon alleges that Defendant COURTYARD HOLDINGS, LP  
10 is the owner, operator, and/or lessor of the real property located  
11 at 11122 Rancho Carmel Drive, San Diego, California 92128,  
12 Assessor Parcel Number: 313-730-38. Defendant COURTYARD HOLDINGS,  
13 LP is located at 601 Thirteenth Street, Suite 450, Washington, DC  
14 20005.

15 5. The words Plaintiff, Plaintiffs, Plaintiff's Member, and  
16 Plaintiff's Members as used herein specifically include  
17 OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS and  
18 DIANE CROSS, An Individual.

19 6. Defendants Does 1 through 10, were at all times relevant  
20 herein subsidiaries, employers, employees, agents, of MARIE  
21 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC  
22 BAGELS, LLC d.b.a. BRUEGGARS BAGELS; and COURTYARD HOLDINGS, LP.  
23 Plaintiffs are ignorant of the true names and capacities of  
24 Defendants sued herein as Does 1 through 10, inclusive, and  
25 therefore sue these Defendants by such fictitious names.  
26 Plaintiffs will pray leave of the court to amend this complaint to  
27 allege the true names and capacities of the Does when ascertained.  
28

1 7. Plaintiffs are informed and believe, and thereon allege, that  
2 Defendants and each of them herein were, at all times relevant to  
3 the action, the owner, lessor, lessee, franchiser, franchisee,  
4 general partner, limited partner, agent, employee, representing  
5 partner, or joint venturer of the remaining Defendants and were  
6 acting within the course and scope of that relationship.

7 Plaintiffs are further informed and believe, and thereon allege,  
8 that each of the Defendants herein gave consent to, ratified,  
9 and/or authorized the acts alleged herein to each of the remaining  
10 Defendants.

11 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**  
12 **ALL DEFENDANTS**

13 8. Plaintiffs are members of a group within the State of  
14 California composed of persons with a wide range of disabilities,  
15 limited to persons who use wheelchairs for mobility, who must be  
16 able to access retail merchandise establishments, like Defendants'  
17 establishments located at 11122 Rancho Carmel Drive, San Diego,  
18 California 92128, Assessor Parcel Number: 313-730-38, and 11134  
19 Rancho Carmel Drive, San Diego, California 92128, Assessor Parcel  
20 Number: 313-042-04. Plaintiffs are precluded from equal access to  
21 Defendants' establishments so meaningfully because the  
22 establishments, and each of them, fail to provide access for  
23 members of the disability community who use a wheelchair for  
24 mobility to the disabled parking, exterior path of travel,  
25 entrance, food service counter, and women's restroom and seating  
26 within the facilities. The Supreme Court of the United States has  
27 held as long as the class representative provides adequate  
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1 representation for the class' interests, the court has the power  
2 to adjudicate the rights and obligations of all class members -  
3 even those who would otherwise be beyond the reach of its personal  
4 jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985).  
5 This case stands for the proposition that minimum contacts are not  
6 required with nonresident members of a plaintiff class because,  
7 "the burdens placed by a State upon absent class action plaintiff  
8 are not of the same order or magnitude as those it places on an  
9 absent defendant." Id. Plaintiffs allege they will insure class  
10 members shall receive adequate notice of the proceedings and the  
11 opportunity to "opt out," if required

12 9. Defendants have conducted themselves such as to establish a  
13 pattern and practice of architectural discrimination. Plaintiffs  
14 allege that Defendants have control over each and every facility,  
15 establishment, and/or business located within the property located  
16 at 11122 Rancho Carmel Drive, San Diego, California 92128,  
17 Assessor Parcel Number: 313-730-38, and 11134 Rancho Carmel Drive,  
18 San Diego, California 92128, Assessor Parcel Number: 313-042-04.  
19 Accordingly, Plaintiffs allege Defendants are responsible for  
20 removing architectural barriers at Defendants' facilities and the  
21 establishments/businesses contained therein.

22 10. For the aforementioned reasons, Plaintiffs allege they are  
23 proper class representatives for members of the disability  
24 community who use a wheelchair for mobility because the members of  
25 the disability community who use a wheelchair for mobility are so  
26 numerous that joinder is impracticable due to the fact more than  
27 one hundred (100) persons fall within the membership description.  
28

1 Also, the questions of law or fact are so common because the  
2 members of the disability community who use a wheelchair for  
3 mobility are being denied their civil rights under federal and  
4 state laws - that is, each member of the disability community who  
5 use a wheelchair for mobility suffered substantially similar  
6 violations relating to the disabled parking, exterior path of  
7 travel, entrance, food service counter, and women's restroom and  
8 seating within the facility. Further, the claims or defenses of  
9 the representative parties are typical - Plaintiffs have the right  
10 to access facilities, establishments, and businesses like those  
11 within the property located at 11122 Rancho Carmel Drive, San  
12 Diego, California 92128, Assessor Parcel Number: 313-730-38, and  
13 11134 Rancho Carmel Drive, San Diego, California 92128, Assessor  
14 Parcel Number: 313-042-04, and the businesses that are located  
15 thereon for many reasons including without limitation the purchase  
16 of retail merchandise. Defendants' facilities are open to the  
17 general public and Plaintiffs have been denied access because of  
18 violations, as outlined above and specifically addressed elsewhere  
19 within this Civil Complaint.

20 11. Additionally, Plaintiffs, as the named representatives, will  
21 fairly and adequately represent the interests of the class because  
22 Plaintiffs and the members of the disability community in the  
23 State of California who use a wheelchair for mobility have  
24 suffered substantially similar violations. Finally, a pattern and  
25 practice exists on the part of Defendants, and each of them, of  
26 architectural discrimination at their public facilities located  
27 within the State of California. On information and good faith  
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1 belief, Plaintiffs thereon allege that Defendants, prior to the  
2 passing of the Americans With Disabilities Act in 1992, conceived,  
3 commissioned, designed, and implemented among other things, a  
4 design for their public facilities, including, but not limited to  
5 the disabled parking, exterior path of travel, entrance, food  
6 service counter, and women's restroom and seating within the  
7 facility which do not meet the minimal standards outlined under  
8 the federal regulations known as the Americans With Disabilities  
9 Act Accessibility Guidelines ("ADAAG") and state regulations, also  
10 known as Title 24 of the California Building Code, and to which  
11 non-compliant plan they continue to utilize to the injury of the  
12 members of the class. For these reasons and the facts as stated  
13 herein, Plaintiffs have the right to maintain this statewide class  
14 action pursuant to Fed.R.Civ.P. Rule 23(b).

15 **CONCISE SET OF FACTS**

16 12. Plaintiff OUTERBRIDGE ACCESS ASSOCIATION is an organization  
17 that advocates on the behalf of its members with disabilities when  
18 their civil rights and liberties have been violated. Plaintiff's  
19 member DIANE CROSS is a member of Plaintiff Organization and has  
20 physical impairments and due to these physical impairments she has  
21 learned to successfully operate a wheelchair. Further,  
22 Plaintiff's Member and Plaintiff DIANE CROSS' said physical  
23 impairments substantially limits one or more of the following  
24 major life activities including but not limited to: walking.

25 13. On November 11, 2006, Plaintiff CROSS went to Defendants'  
26 public accommodation facilities known as MARIE CALLENDER'S PIE  
27 SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC BAGELS, LLC  
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1 d.b.a. BRUEGGARS BAGELS; COURTYARD HOLDINGS, LP, located at 11122  
2 Rancho Carmel Drive, San Diego, California 92128, Assessor Parcel  
3 Number: 313-730-38, and 11134 Rancho Carmel Drive, San Diego,  
4 California 92128, Assessor Parcel Number: 313-042-04, to utilize  
5 their goods and/or services accompanied by a friend. When  
6 Plaintiff CROSS patronized Defendants' facilities, she was unable  
7 to use and/or had difficulty using the public accommodations'  
8 facilities within the common area including but not limited to the  
9 disabled parking and exterior path of travel, as said were not  
10 accessible because they failed to comply with ADA Access  
11 Guidelines For Buildings and Facilities (hereafter referred to as  
12 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
13 California's Title 24 Building Code Requirements. Defendants  
14 failed to remove barriers to equal access within the common area  
15 in which the public accommodation facilities known as MARIE  
16 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; and  
17 PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS are located.

18 14. Plaintiff CROSS personally experienced difficulty with said  
19 access barriers within the common area in which the public  
20 accommodation facilities known as MARIE CALLENDER'S PIE SHOPS,  
21 INC. d.b.a. MARIE CALLENDER'S #254, (hereinafter "MARIE  
22 CALLENDER'S #254"), and PACIFIC BAGELS, LLC d.b.a. BRUEGGARS  
23 BAGELS, (hereinafter "BRUEGGARS BAGELS"), are located. The  
24 following examples of known barriers to access are not an  
25 exhaustive list of the barriers to access that exist within the  
26 common area of Defendants' facilities. For example, a "Van  
27 Accessible" disabled parking space is located directly in front of  
28

1 Pearle Vision, which is near MARIE CALLENDER'S #254; and BRUEGGARS  
2 BAGELS. The access aisle for this "Van Accessible" disabled  
3 parking space fails to be compliant, as a ramp impermissibly  
4 encroaches into the access aisle. There are two (2) designated  
5 disabled parking spaces directly serving MARIE CALLENDER'S #254.  
6 The access aisle in between these two spaces fails to be  
7 accessible, as a ramp impermissibly encroaches into this access  
8 aisle. There is also a "Van Accessible" disabled parking space  
9 located in the middle of the parking lot. This space fails to be  
10 accessible, as it fails to provide an accessible route to any  
11 of the facilities entrance located within the complex. Patrons  
12 using this space would be forced to transverse through vehicular  
13 traffic without the benefit of a marked path of travel.

14 15. When Plaintiff CROSS patronized Defendants' MARIE CALLENDER'S  
15 #254 facilities, she was unable to use and/or had difficulty using  
16 the public accommodations' facilities including but not limited to  
17 the entrance, food service counter, and women's restroom, as said  
18 were not accessible because they failed to comply with ADA Access  
19 Guidelines For Buildings and Facilities (hereafter referred to as  
20 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
21 California's Title 24 Building Code Requirements. Defendants  
22 failed to remove barriers to equal access within the public  
23 accommodation facilities known as MARIE CALLENDER'S #254.

24 16. Plaintiff CROSS personally experienced difficulty with said  
25 access barriers at MARIE CALLENDER'S #254. The following examples  
26 of known barriers to access are not an exhaustive list of the  
27 barriers to access that exist at Defendants' facilities. For  
28

1 example, the entrance to MARIE CALLENDER'S #254 fails to display  
2 the required International Symbol of Accessibility. The salad bar  
3 fails to be accessible, as condiments fail to be located within  
4 accessible reach ranges

5 17. The entrance door to the women's restroom within MARIE  
6 CALLENDER'S #254 fails to be accessible, as it requires an  
7 excessive amount of pressure to open. Also, within the women's  
8 restroom, the lavatory handles fail to be accessible, as they  
9 require tight grasping and/or twisting of the wrist to operate.

10 18. When Plaintiff CROSS patronized Defendants' BRUEGGARS BAGELS  
11 facilities, she was unable to use and/or had difficulty using the  
12 public accommodations' facilities including but not limited to the  
13 entrance, food service counters, women's restroom, and seating, as  
14 said were not accessible because they failed to comply with ADA  
15 Access Guidelines For Buildings and Facilities (hereafter referred  
16 to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
17 California's Title 24 Building Code Requirements. Defendants  
18 failed to remove barriers to equal access at the public  
19 accommodation facilities known as BRUEGGARS BAGELS.

20 19. Plaintiff CROSS personally experienced difficulty with said  
21 access barriers at BRUEGGARS BAGELS. The following examples of  
22 known barriers to access are not an exhaustive list of the  
23 barriers to access that exist at Defendants' facilities. For  
24 example, the entrance to BRUEGGARS BAGELS fails to display the  
25 required International Symbol of Accessibility.

26 20. The counter within BRUEGGARS BAGELS where patrons order and  
27 also where the trays are kept fails to be accessible, as it is too  
28

1 high to be accessible. There also fails to be any disability  
2 signage informing disabled patrons that assistance is available  
3 upon request. Also, the tableware, condiments, and napkins fail to  
4 be accessible, as they fail to be located within accessible reach  
5 ranges. The napkins are located impermissibly high above the trash  
6 receptacle.

7 21. Within BRUEGGARS BAGELS, the women's restroom fails to be  
8 accessible, as highchairs were stacked in front of the door. Also  
9 within the BRUEGGARS BAGELS women's restroom, the paper towel  
10 dispenser fails to be accessible, as it is mounted at an excessive  
11 52" high and the toilet tissue dispenser fails to be accessible,  
12 as it is mounted an impermissible 44" high.

13 22. BRUEGGARS BAGELS fails to provide any accessible seating  
14 inside or outside of the facility.

15 23. Plaintiffs can prove these barriers as Plaintiffs conducted a  
16 preliminary survey of Defendants' facilities. Plaintiff  
17 Association alleges that its visually and hearing impaired members  
18 desire to go to Defendants' facility but cannot because of lack of  
19 auxiliary aids. Plaintiffs specifically allege that Defendants  
20 knew, to a substantial certainty, that the architectural barriers  
21 precluded wheelchair access. First, Plaintiffs will prove that  
22 Defendants had actual knowledge that the architectural barriers  
23 precluded wheelchair access and that the noncompliance with ADAAG  
24 as to accessible entrances was intentional. Second, due to the  
25 abundance of ADA information and constant news covers of ADA  
26 lawsuits, Defendants had actual knowledge of the ADA and decided  
27 deliberately not to remove architectural barriers. Third,  
28

1 Defendants have no plans to remodel. Fourth, Defendants had  
2 actual knowledge of ADA given all the ADA public awareness  
3 campaigns, the abundance of free ADA information and the media's  
4 constant ADA coverage. Fifth, a human being acting for the  
5 defendants made a conscious decision as to how to proceed given  
6 the presence of the architectural barriers. Plaintiffs allege  
7 any alternative methods preclude integration of wheelchair  
8 patrons, as it requires them to use a second-class entrance.  
9 Also, expert testimony will show the facility contained  
10 inaccessible features. Plaintiffs allege businesses often state  
11 that they have few customers with disabilities. Plaintiffs allege  
12 such customers avoid patronizing inaccessible business and are  
13 deterred from patronizing such businesses.

14 24. Plaintiff's Member and Plaintiff DIANE CROSS intends to  
15 return to Defendants' public accommodation facilities in the  
16 immediate future. Plaintiffs' Member and Plaintiff DIANE CROSS is  
17 presently deterred from returning due to her knowledge of the  
18 barriers to access that exist at Defendants' facilities.

19 25. Pursuant to federal and state law, Defendants are required to  
20 remove barriers to their existing facilities. Further, Defendants  
21 had actual knowledge of their barrier removal duties under the  
22 Americans with Disabilities Act and the Civil Code before January  
23 26, 1992. Also, Defendants should have known that individuals  
24 with disabilities are not required to give notice to a  
25 governmental agency before filing suit alleging Defendants failed  
26 to remove architectural barriers.

27 26. Based on these facts, Plaintiffs allege they were  
28

1 discriminated against each time they patronized Defendants'  
2 facilities. Plaintiff's Member and Plaintiff DIANE CROSS was  
3 extremely upset due to Defendants' conduct.

4 **NOTICE**

5 27. Plaintiffs are not required to provide notice to the  
6 defendants prior to filing a complaint. Skaiff v Meridien N. Am.  
7 Beverly Hills, LLC, 506 F.3d 832 (9<sup>th</sup> Cir. 2007), see also Botosan  
8 v. Paul McNally Realty, 216 F.3d 827, 832 (9<sup>th</sup> Cir 2000).

9  
10 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

11 28. MARIE CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S  
12 #254; PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS; COURTYARD  
13 HOLDINGS, LP; and Does 1 through 10 will be referred to  
14 collectively hereinafter as "Defendants."

15 29. Plaintiffs aver that the Defendants are liable for the  
16 following claims as alleged below:

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

18 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**  
19 **Americans With Disabilities Act Of 1990**

20 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

21 30. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in  
22 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was  
23 denied full and equal access to Defendants' goods, services,  
24 facilities, privileges, advantages, or accommodations. Plaintiffs  
25 allege Defendants are a public accommodation owned, leased and/or  
26 operated by Defendants. Defendants' existing facilities and/or  
27 services failed to provide full and equal access to Defendants'  
28

1 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's  
2 Member and Plaintiff DIANE CROSS was subjected to discrimination  
3 in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42  
4 U.S.C. § 12188 because Plaintiff's Member and Plaintiff DIANE  
5 CROSS was denied equal access to Defendants' existing facilities.  
6 31. Plaintiff's Member and Plaintiff DIANE CROSS has physical  
7 impairments as alleged in ¶ 12 above because her conditions affect  
8 one or more of the following body systems: neurological,  
9 musculoskeletal, special sense organs, and/or cardiovascular.  
10 Further, Plaintiff's Member and Plaintiff DIANE CROSS' said  
11 physical impairments substantially limits one or more of the  
12 following major life activities: walking. In addition,  
13 Plaintiff's Member and Plaintiff DIANE CROSS cannot perform one or  
14 more of the said major life activities in the manner, speed, and  
15 duration when compared to the average person. Moreover,  
16 Plaintiff's Member and Plaintiff DIANE CROSS has a history of or  
17 has been classified as having a physical impairment as required by  
18 42 U.S.C. § 12102(2)(A).  
19

20 CLAIM II AGAINST ALL DEFENDANTS: **Failure To Make Alterations In**  
21 **Such A Manner That The Altered Portions Of The Facility Are**  
22 **Readily Accessible And Usable By Individuals With Disabilities**

23 32. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in  
24 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was  
25 denied full and equal access to Defendants' goods, services,  
26 facilities, privileges, advantages, or accommodations within a  
27 public accommodation owned, leased, and/or operated by Defendants.  
28

1 Defendants altered their facility in a manner that affects or  
2 could affect the usability of the facility or a part of the  
3 facility after January 26, 1992. In performing the alteration,  
4 Defendants failed to make the alteration in such a manner that, to  
5 the maximum extent feasible, the altered portions of the facility  
6 are readily accessible to and usable by individuals with  
7 disabilities, including individuals who use wheelchairs, in  
8 violation of 42 U.S.C. §12183(a)(2).

9 33. Additionally, the Defendants undertook an alteration that  
10 affects or could affect the usability of or access to an area of  
11 the facility containing a primary function after January 26, 1992.  
12 Defendants further failed to make the alterations in such a manner  
13 that, to the maximum extent feasible, are readily accessible to  
14 and usable by individuals with disabilities in violation 42 U.S.C.  
15 §12183(a)(2).

16 34. Pursuant to 42 U.S.C. §12183(a), this failure to make the  
17 alterations in a manner that, to the maximum extent feasible, are  
18 readily accessible to and usable by individuals with disabilities  
19 constitutes discrimination for purposes of 42 U.S.C. §12183(a).  
20 Therefore, Defendants discriminated against Plaintiffs in  
21 violation of 42 U.S.C. § 12182(a).

22 35. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was  
23 subjected to discrimination in violation of 42 U.S.C. § 12183(a),  
24 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's  
25 Member and Plaintiff DIANE CROSS was denied equal access to  
26 Defendants' existing facilities.  
27  
28

1 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural**  
2 **Barriers**

3 36. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in  
4 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was  
5 denied full and equal access to Defendants' goods, services,  
6 facilities, privileges, advantages, or accommodations within a  
7 public accommodation owned, leased, and/or operated by Defendants.

8 Defendants failed to remove barriers as required by 42 U.S.C. §  
9 12182(a). Plaintiffs are informed, believe, and thus allege that  
10 architectural barriers which are structural in nature exist within  
11 the physical elements of Defendants' facilities. Title III  
12 requires places of public accommodation to remove architectural  
13 barriers that are structural in nature to existing facilities.

14 [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to  
15 remove such barriers and disparate treatment against a person who  
16 has a known association with a person with a disability are forms  
17 of discrimination. [See 42 United States Code  
18 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DIANE  
19 CROSS was subjected to discrimination in violation of 42 United  
20 States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they  
21 were denied equal access to Defendants' existing facilities.  
22

23 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**  
24 **Policies And Procedures**

25 37. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in  
26 this complaint, Defendants failed and refused to provide a  
27 reasonable alternative by modifying its practices, policies and  
28

1 procedures in that they failed to have a scheme, plan, or design  
2 to assist Plaintiffs and/or others similarly situated in entering  
3 and utilizing Defendants' services, as required by 42 U.S.C. §  
4 12188(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was  
5 subjected to discrimination in violation of 42 United States Code  
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
7 Member and Plaintiff DIANE CROSS was denied equal access to  
8 Defendants' existing facilities.

9 38. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,  
10 and III of Plaintiff's First Cause Of Action above, and the facts  
11 elsewhere herein this complaint, Plaintiffs will suffer  
12 irreparable harm unless Defendants are ordered to remove  
13 architectural, non-architectural, and communication barriers at  
14 Defendants' public accommodation. Plaintiffs allege that  
15 Defendants' discriminatory conduct is capable of repetition, and  
16 this discriminatory repetition adversely impacts Plaintiffs and a  
17 substantial segment of the disability community. Plaintiffs  
18 allege there is a national public interest in requiring  
19 accessibility in places of public accommodation. Plaintiffs have  
20 no adequate remedy at law to redress the discriminatory conduct of  
21 Defendants. Plaintiffs desire to return to Defendants' places of  
22 business in the immediate future. Accordingly, the Plaintiffs  
23 allege that a structural or mandatory injunction is necessary to  
24 enjoin compliance with federal civil rights laws enacted for the  
25 benefit of individuals with disabilities.

26 39. WHEREFORE, Plaintiffs pray for judgment and relief as  
27 hereinafter set forth.  
28

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**  
**CALIFORNIA ACCESSIBILITY LAWS**

CLAIM I: **Denial Of Full And Equal Access**

40. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities.

41. These violations denied Plaintiff's Member and Plaintiff DIANE CROSS full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff DIANE CROSS was denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

CLAIM II: **Failure To Modify Practices, Policies And Procedures**

42. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code §

1 54.1. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was  
2 subjected to discrimination in violation of Civil Code § 54.1.

3 CLAIM III: **Violation Of The Unruh Act**

4 43. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere  
5 herein this complaint and because Defendants violated the Civil  
6 Code § 51 by failing to comply with 42 United States Code §  
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
8 continue to discriminate against Plaintiffs and persons similarly  
9 situated in violation of Civil Code §§ 51, 52, and 54.1.

10 44. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,  
11 and III of Plaintiffs' Second Cause Of Action above, and the facts  
12 elsewhere herein this complaint, Plaintiffs will suffer  
13 irreparable harm unless Defendants are ordered to remove  
14 architectural, non-architectural, and communication barriers at  
15 Defendants' public accommodation. Plaintiffs allege that  
16 Defendants' discriminatory conduct is capable of repetition, and  
17 this discriminatory repetition adversely impacts Plaintiffs and a  
18 substantial segment of the disability community. Plaintiffs  
19 allege there is a state and national public interest in requiring  
20 accessibility in places of public accommodation. Plaintiffs have  
21 no adequate remedy at law to redress the discriminatory conduct of  
22 Defendants. Plaintiffs desire to return to Defendants' places of  
23 business in the immediate future. Accordingly, the Plaintiffs  
24 allege that a structural or mandatory injunction is necessary to  
25 enjoin compliance with state civil rights laws enacted for the  
26 benefit of individuals with disabilities.

27 45. Wherefore, Plaintiffs pray for damages and relief as  
28

1 hereinafter stated.

2  
3 **Treble Damages Pursuant To Claims I, II, III Under The California**  
4 **Accessibility Laws**

5 46. Defendants, each of them respectively, at times prior to and  
6 including, the month of November of 2006, and continuing to the  
7 present time, knew that persons with physical disabilities were  
8 denied their rights of equal access to all portions of this public  
9 facility. Despite such knowledge, Defendants, and each of them,  
10 failed and refused to take steps to comply with the applicable  
11 access statutes; and despite knowledge of the resulting problems  
12 and denial of civil rights thereby suffered by Plaintiffs and  
13 other similarly situated persons with disabilities. Defendants,  
14 and each of them, have failed and refused to take action to grant  
15 full and equal access to persons with physical disabilities in the  
16 respects complained of hereinabove. Defendants, and each of them,  
17 have carried out a course of conduct of refusing to respond to, or  
18 correct complaints about, denial of disabled access and have  
19 refused to comply with their legal obligations to make Defendants'  
20 public accommodation facilities accessible pursuant to the  
21 Americans With Disability Act Access Guidelines (ADAAG) and Title  
22 24 of the California Code of Regulations (also known as the  
23 California Building Code). Such actions and continuing course of  
24 conduct by Defendants, and each of them, evidence despicable  
25 conduct in conscious disregard of the rights and/or safety of  
26 Plaintiffs and of other similarly situated persons, justifying an  
27 award of treble damages pursuant to sections 52(a) and 54.3(a) of  
28

1 the California Civil Code.

2 47. Defendants, and each of their actions have also been  
3 oppressive to persons with physical disabilities and of other  
4 members of the public, and have evidenced actual or implied  
5 malicious intent toward those members of the public, such as  
6 Plaintiffs and other persons with physical disabilities who have  
7 been denied the proper access to which they are entitled by law.  
8 Further, Defendants, and each of their, refusals on a day-to-day  
9 basis to correct these problems evidence despicable conduct in  
10 conscious disregard for the rights of Plaintiffs and other members  
11 of the public with physical disabilities.

12 48. Plaintiffs pray for an award of treble damages against  
13 Defendants, and each of them, pursuant to California Civil Code  
14 sections 52(a) and 54.3(a), in an amount sufficient to make a more  
15 profound example of Defendants and encourage owners,  
16 lessors/lessees, and operators of other public facilities from  
17 willful disregard of the rights of persons with disabilities.  
18 Plaintiffs do not know the financial worth of Defendants, or the  
19 amount of damages sufficient to accomplish the public purposes of  
20 section 52(a) of the California Civil Code and section 54.3 of the  
21 California Civil Code.

22 49. Wherefore, Plaintiffs pray for damages and relief as  
23 hereinafter stated.

24 ///

25 ///

26 **DEMAND FOR JUDGMENT FOR RELIEF:**

27 A. For general damages pursuant to Cal. Civil Code §§ 52 or  
28

1 54.3;

2 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
3 each and every offense of Civil Code § 51, Title 24 of the  
4 California Building Code, ADA, and ADA Accessibility Guidelines;

5 C. In the alternative to the damages pursuant to Cal. Civil Code  
6 § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal.  
7 Civil Code § 54.3 for each and every offense of Civil Code § 54.1,  
8 Title 24 of the California Building Code, ADA, and ADA  
9 Accessibility Guidelines;

10 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a).  
11 Plaintiffs request this Court enjoin Defendants to remove all  
12 architectural barriers in, at, or on their facilities.

13 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. §  
14 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;

15 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or  
16 54.3(a);

17 G. A Jury Trial and;

18 H. For such other further relief as the court deems proper.  
19

20 Respectfully submitted:

21 **PINNOCK & WAKEFIELD, A.P.C.**

22 Dated: January 15, 2008

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